IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4134 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
NARANBHAI HIRABHAI PATNI & 7 - Defendant(s)

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Appearance :
MS MEGHA JANI for Appellant(s) : 1,
None for Defendant(s) : 1 - 8.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 21/09/2007

ORAL JUDGMENT

1. The short facts of the case appears to be on 1.4.2002, at about 8.00 p.m, when the deceased was returning towards Ahmedabad by driving rickshaw bearing registration No.GJ 7 U 4688, when rickshaw reached near Lavarpur Patia, the opponent No.3 the driver of Jeep bearing registration No. GJ 9 T 1375, being driven in rash and negligent manner, dashed with the rickshaw on the front portion and the driver of rickshaw-deceased Sureshbhai as well as the passengers of the rickshaw one Naranbhai and others sustained serious injuries. The claim petition was filed being MACP No.528/2003 before the Tribunal for recovery of the compensation of Rs.7 lacs. The Tribunal after adjudication awarded the compensation of Rs.5,24,700/- with interest @ 7.5% p.a. Under these circumstances, the present appeal before this Court.

2. Heard Ms.Jani, learned counsel for the appellant. Considered the Judgment and Award passed by the Tribunal and also the deposition of the eye witness Naranbhai Patni who was also passenger in the rickshaw.

3. The learned counsel for the appellant first contended that the contributory negligence held of the driver of the jeep, which was insured with the appellant, of 90% which is erroneous on the part of the Tribunal. The Tribunal could not have been attributed 90% negligence merely because the jeep is a vehicle of big size.

4. The examination of the said contention shows that the learned Tribunal after considering the FIR and panchnama has also found that the rickshaw was driven in full speed. Not only that but the eye witness Naranbhai has deposed that the jeep came on wrong side and dashed with the rickshaw and the said eye witness who was passenger in the rickshaw is also injured. Under these circumstances if the Tribunal has attributed the negligence to the extent of 90% to the driver of jeep, such an approach from the part of the Tribunal cannot be said as unjust or unreasonable.

5. Learned counsel for the appellant next contented that the Tribunal ought not to have assessed the income of the driver of the rickshaw at Rs.3,000/- p.m. in absence of any proof to support the income and, therefore, there is an error committed by the Tribunal.

6. The examination of the said contention shows that the fact that the deceased was driving rickshaw is not in dispute and at the time of accident also the passengers were also found in the rickshaw. Therefore, under these circumstances that the deceased was a driver driving rickshaw, if the Tribunal has assessed the income at the rate of Rs.100/- per day to a total of Rs.3,000/- p.m, such an approach on the part of the Tribunal cannot be said as unjust or unreasonable, more particularly,

when the rickshaw was being used in Ahmedabad and peripheral area of Ahmedabad City.

7. No other contention is raised.

8. In the result, the appeal is meritless and therefore, dismissed.

[JAYANT PATEL, J.]

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